

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)	CG Docket 02-278
)	
American Teleservices Association, Inc.’s Petition For Declaratory Ruling on Preemption of New Jersey’s Telemarketing Rules)	DA 04-3185
)	
)	

COMMENTS OF TELETECH HOLDINGS, INC.

TeleTech Holdings, Inc. (“TeleTech”), by its attorneys and pursuant to FCC Public Notice DA 04-3185¹, hereby files these comments in response to the Commission’s request for comment on the Petition for Declaratory (the “Petition”) on Preemption of New Jersey Telemarketing Rules, filed by American Teleservices Association, Inc. (“ATA”) on August 24, 2004 (the “ATA Petition”). TeleTech submits that the new telemarketing rules implemented by the state of New Jersey (and other states) impermissibly apply to interstate calls and impose a significant additional burden on TeleTech’s ability to conduct its business operations. Consequently, TeleTech urges the Commission to grant ATA’s Petition, and to grant the Petition for Reconsideration (“Petition”) in this docket filed by The Direct Marketing Association (the “DMA”) on August 25, 2003.

I. Background

TeleTech is a leading global provider of comprehensive customer management and business process outsourcing solutions. One of TeleTech’s main line of business is providing

¹ FCC Public Notice DA 04-3185, released October 4, 2004.

"customer care" for the customers of TeleTech's clients, including receiving and responding to telephone and Internet inquiries from customers of TeleTech's clients, and making various types of outgoing calls to its clients' customers. "Customer care" includes answering questions asked by the clients' customers before a sale, providing information on new products offered by TeleTech's clients, enrolling customers in clients' programs, arranging product shipments to customers of TeleTech's clients, providing 24-hour technical and help desk support for customers of TeleTech's clients, resolving customer complaints, and conducting satisfaction surveys. TeleTech handles service calls from customers of many types of businesses, including airlines, telephone companies, banks, computer companies, utility companies and other types of businesses. Consequently, both federal and state telemarketing laws and rules apply to TeleTech, and TeleTech actively tracks Federal Communications Commission ("FCC"), Federal Trade Commission ("FTC") and state-level "Do-Not-Call" and other telemarketing proceedings.

II. Argument

While TeleTech strongly supports ATA's petition, TeleTech also supports prior requests to the Commission to preempt all state telemarketing rules regulating interstate communications that are inconsistent with the federal telemarketing policies adopted by the FCC. When the DMA filed its Petition for Reconsideration of the final Do-Not-Call ("DNC") rules adopted in this docket, its primary request was for the Commission to reconsider "the extent to which states may seek to apply their ... DNC requirements to interstate marketers".² Indeed, in its Petition, the DMA predicted the very preemption predicament that is before the Commission today. "Their [state] laws are inconsistent, but they will not stand down. Even states that have agreed to adopt the national database as a state list may seek to apply inconsistent substantive standards to

² DMA Petition at 1.

interstate calls, for example, by applying differing definitions of established business relationship or in defining the exemption of the nonprofit organizations more narrowly than the FCC rules.”³

As the Commission is now aware, contrary to the FCC’s hopes, states are not seeking to harmonize their own telemarketing laws with federal law.⁴ Rather, many states (like New Jersey) not only have adopted new telemarketing regulations, applicable to interstate communications, that conflict with FCC rules, but states have also begun to vigorously enforce these inconsistent regulations. As a result, it appears clear that unless the FCC acts soon to preempt inconsistent state regulation, the FCC is likely to see both increasing numbers of declaratory ruling preemption petitions, and telemarketing companies subject to state enforcement proceedings for purported violations of state telemarketing rules based on interstate calls. Therefore, while TeleTech agrees that the New Jersey provisions at issue should be preempted, TeleTech urges the Commission to address this issue in a more comprehensive fashion and to grant the DMA’s Petition seeking full federal preemptive authority over all inconsistent state telemarketing laws that seek to regulate interstate telemarketing.

The Commission should also consider the impact of new technologies and existing regulatory policies on states’ attempts to regulate interstate telemarketing calls. Specifically, with the advent of VoIP services and with the imposition of local number portability (“LNP”) obligations on wireless providers, it is increasingly difficult for telemarketers to actually know where a called party is located. For example, if a New Jersey resident were to port their wireline phone number to a New Jersey CMRS provider, and then move to another state, New Jersey telemarketing laws no longer should apply to that customer. Nevertheless, because the original

³ DMA Petition at 4.

⁴ On October 4, 2004, the DMA filed a letter in this docket to update the FCC’s record on the state preemption issue, and to ask the Commission to act on the DMA’s reconsideration request.

telephone number had a New Jersey area code, the technology employed by TeleTech and similar companies would treat that number as being subject to New Jersey law. Similarly, as the Commission very recently recognized,⁵ a VoIP communications user could have a New Jersey phone number, but due to the nomadic nature of the service, could be located anywhere. The old notion that one can determine an individual's physical location based on their phone number is no longer completely accurate. It also highlights the undesirable situation of improperly applying one state's law to an individual who no longer resides there. Unless the Commission preempts state telemarketing regulations that are inconsistent with federal rules, states like New Jersey will continue to pass telemarketing laws that not only impede upon interstate calls, but also have impermissible extraterritorial impact due to LNP requirements and emerging technologies, such as VoIP.⁶

If the Commission chooses to continue to address these issues on a case-by-case basis, TeleTech urges the FCC to preempt New Jersey's evisceration of the federal established business relationship ("EBR") exemption. Specifically, New Jersey new telemarketing rules do not exempt calls to individuals who have either completed transactions with the seller within 18 months of the date of the telemarketing call, or to individuals who inquired about or applied for the seller's services within three months of the date of the call. These two aspects are essential elements of the federal EBR exemption. The FCC should also keep in mind that the state of Indiana's telemarketing rules do not allow for any EBR exemption. If the FCC allows these new New Jersey regulations to stand, the New Jersey rules in conjunction with other states' more

⁵ See *Memorandum Opinion and Order in WC Docket 03-211*, Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, FCC 04-267, released November 12, 2004 ("Vonage MO&O").

⁶ Indeed, the Commission recently stated that such extraterritorial regulation of interstate services "would

restrictive EBR telemarketing regulations cumulatively could have the impact of gutting the federal EBR.

Finally, TeleTech also urges the FCC to preempt New Jersey's new disclosure requirements, which far exceed the federal disclosure requirements. Under the New Jersey rule, telemarketers must provide the called party with: 1) the name of the caller; 2) the name of the entity on whose behalf the call is being made; 3) a telephone number or address where the person or entity may be contacted; and 4) the name of the telemarketing company making the call. The last requirement seemingly was added so that companies that provide telemarketing services will also be placed on company-specific DNC lists, not just the company on whose behalf the call was made. Furthermore, unlike federal rules, all of these disclosures must be made within the first 30 seconds of the call. As ATA explains, these new disclosure rules could have a dramatic impact on a telemarketers ability to perform services for their customers. TeleTech agrees with ATA that there is no rational policy basis for this requirement. Company-specific DNC lists are provided for under federal and most state rules – an additional list is not necessary and is merely punitive against companies providing telemarketing services.

III. CONCLUSION

TeleTech urges the Commission to preempt the new telemarketing rules implemented by the state of New Jersey. As explained above, these new rules impermissibly apply to interstate calls and are imposing a significant additional burden on TeleTech's and other companies' ability to conduct their lawful business operations. TeleTech also urges the Commission to review the record generated in this docket since the release of the Commission's DNC Report and Order in July 2003, and grant the DMA's request for full preemption of all inconsistent state telemarketing laws that seek to regulate interstate telemarketing.

likely violate the Commerce Clause". Vonage MO&O at ¶ 39.

Respectfully submitted,
TELETECH HOLDINGS, INC.

By: /s/ Theresa Z. Cavanaugh
Theresa Z. Cavanaugh
Its Attorneys

COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, NW
Second Floor
Washington, DC 20006
(202) 659-9750

November 17, 2004